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No. 93-1179

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1993

SAMIRAT HAFIZ,
Petitioner,

vs.

ELECTRONIC DATA SYSTEMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF ELECTRONIC DATA SYSTEMS IN OPPOSITION

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15 pp

QUESTION PRESENTED FOR REVIEW

Did the Sixth Circuit Court of Appeals properly affirm the trial court's grant of summary judgment in favor of EDS in this wrongful discharge case brought under Michigan state law?

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STATEMENT OF JURISDICTION

This petition presents no basis for certiorari review. There are no constitutional or federal questions at stake; there are no direct conflicts in the circuit courts; there are no faulty statutory constructions; there are no allegations of impropriety by public officials that depart from the usual course of judicial proceedings; there are no rulings that threaten to disrupt the basic order of things. In short, Petitioner fails to present any "special and important reasons" to justify granting the writ of certiorari.

STATEMENT OF THE CASE

After the close of discovery, EDS moved for summary judgment on the petitioner's claims of wrongful discharge, retaliatory discharge, and discriminatory discharge under Michigan state law. After an exhaustive review of the complete summary judgment record and a thorough analysis of the applicable substantive and procedural law, the trial court granted summary judgment for EDS on plaintiff's entire case.

Petitioner appealed the summary judgment to the Sixth Circuit. The Sixth Circuit conducted a *de novo* review of the record evidence. In a well-reasoned *per curiam* opinion, the Sixth Circuit affirmed the trial court's grant of summary judgment. The Sixth Circuit found the record evidence insufficient to raise a genuine issue of material fact as to each of Petitioner's claims as follows:

1. Petitioner's claim of wrongful discharge was without merit. Petitioner's employment was "at will" and not "just cause" under Michigan law.

2. Petitioner's claim of retaliatory discharge was without merit. Petitioner failed to present evidence linking her performance improvement plan to the filing of her complaint with the Michigan Department of Civil Rights. Petitioner also failed to present any evidence that the TOPS project to which she was assigned was created by EDS as a ruse to justify Petitioner's discharge.

3. Petitioner's claim of discriminatory discharge based on national origin and religion was without merit. Petitioner failed to present evidence of ~~similar~~ly situated individuals on her claim of disparate

> treatment. Petitioner also failed to present evidence that her supervisors had a predisposition to discriminate and acted on that predisposition on her claim of intentional discrimination.

Now Petitioner asks the Supreme Court to canvass the record evidence for the third time looking for genuine issues of material fact sufficient to defeat summary judgment. Simply put, that is not an appropriate function for this Court on certiorari review.

SUMMARY OF THE ARGUMENT

This is a garden variety wrongful termination case. Petitioner contends that review is warranted because the Sixth Circuit incorrectly decided the facts of this case in affirming summary judgment against her. This is not a proper basis for Supreme Court review.

The twenty-four questions presented in the petition are factual inquiries unique to this particular litigant. Nothing has been shown by Petitioner to warrant a reexamination of settled principles of law. There are no important questions of federal or constitutional law raised by the *Petition.* Public importance, which should be the cornerstone of a petition for certiorari, is fatally absent from this appeal.

Under these circumstances, this Court should not expend its limited resources on an appeal that is of no interest to anyone other than the parties involved. This appeal represents nothing more than Petitioner's last effort to avoid the legal consequence of a factually deficient lawsuit. This is not a proper basis for further review of this case, and the *Petition* should be denied.

ARGUMENT

I. This Summary Judgment Case Does Not Present Any Issues Of Overriding National Or Public Importance Sufficient To Warrant Review On Appeal.

None of the questions presented by Petitioner in this case remotely suggest a significant issue of law or public importance for this Court's review. Rule 10 of the Rules of the Supreme Court of the United States[1] governs the exercise of the Court's discretionary power of review on a writ of certiorari. Cases considered "special and important" within the meaning of Rule 10 imply a reach to a problem beyond the academic or the episodic. *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70,74 (1955). Justice Franfurter underscores this point:

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing

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[1] Rule 10 states, in pertinent part:

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

> conflict of opinion and authority between the Circuit Courts of Appeal.

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. at 79.

The only questions Petitioner raises turn on the particular facts of this case alone and are of interest only to the parties to it. In essence, Petitioner asks the Court to make a third review of the summary judgment record to find what two previous courts determined did not exist -- genuine issues of material fact sufficient to defeat summary judgment. This Court has ruled that such fact canvassing is not a task to be served by a grant of certiorari: "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925).

Moreover, in the realm of factual review and analysis, the rulings of the courts below are treated with and entitled to great weight. In the present case, Petitioner raises only questions turning entirely on the facts of this case, already resolved twice in EDS' favor and without any impact outside the limits of this case. This Court has stated that it "does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70,74 (1955).

Where this Court has granted review of summary judgment cases on petitions for certiorari, the same stringent standards apply -- the facts must raise significant issues of federal or constitutional dimension having broad application beyond the individual litigants. *Eastman Kodak Company v. Image Technical Services, Inc.*, 112 S.Ct. 2072 (1992) (Where the Court decided the correct legal standard for summary judgment in an antitrust controversy); *Masson v. New Yorker Magazine, Inc.*, 111 S.Ct. 2419 (1991) (where

the Court considered the constitutional question of proving falsity sufficient to establish actual malice in the framework of a defamation summary judgment suit); *Lujan, Secretary of the Interior, et al. v. National Wildlife Federation, et al.*, 497 U.S. 871 (1990) (where the Court addressed the correct legal standard to determine plaintiffs' standing to challenge the Federal Government's use of public lands under the Administrative Procedures Act).

This *Petition* presents only the problems of one litigant dissatisfied with the just and efficient resolution of a case wholly lacking in merit. The only error Petitioner alleges is that the Sixth Circuit incorrectly decided the facts of her case. Because this Court does not sit to correct error or resolve disputed fact issues or to hear the ordinary run of litigation, certiorari should be denied.

II. This Is Not An Appropriate Case For The Exercise Of The Court's Powers of Supervision.

Petitioner makes no showing beyond conclusory assertions that the Sixth Circuit's decision so far departs from the accepted and usual course of judicial proceedings or sanctions such a departure by the trial court as to call for an exercise of this Court's power of supervision. (Sup. Ct. R. 10.1). The only error Petitioner alleges is that the Sixth Circuit incorrectly decided the facts of this particular case.

Petitioner's disagreement with the decision of a court of last resort, without more, is not enough to invoke this Court's power of supervision. The supervisory powers of the Supreme Court should be used sparingly, with precision, and only where the general state of the law requires review. For that reason, the writ of certiorari should be denied.

CONCLUSION

The Petitioner has set forth no reasons to justify further review of this matter. Petitioner's arguments raise no significant legal issues to show that the Sixth Circuit Court of Appeals incorrectly upheld summary judgment in this case. Accordingly, and for all the foregoing reasons, EDS respectfully requests that the *Petition for Writ of Certiorari* be denied.

Respectfully submitted,

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